Supreme Court, U.S.
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NO. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

_____

CHARLES R. KIDD - PETITIONER
VS.
MAE BELL KIDD - RESPONDENT

ON A PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CIVIL APPEALS OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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15 pp

QUESTION PRESENTED

Whether it is a violation, in a divorce case, of the defendant's Constitutional right to due process of law where the decision of the trial judge to divide the parties' property equally between them was made before the defendant put on his case?

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OPINIONS BELOW

1. The judgment of the Alabama Court of Civil Appeals, which was the highest court to review the merits, on appeal from the Monroe County Circuit Court, and in which no opinion was written, appears at Appendix A to the petition and is unpublished.

2. The judgment of the Alabama Court of Civil Appeals on Application for Rehearing, in which no opinion was written, appears at Appendix B to the petition and is unpublished.

3. The judgment of the Supreme Court of Alabama on Petition for Writ of Certiorari appears at Appendix C to the petition and is unpublished.

JURISDICTION

1. The date on which the Supreme Court of Alabama denied the Petition for Writ of Certiorari was December 12, 1997. A copy of that decision appears at Appendix C.

2. The jurisdiction of this Court in invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

1. U. S. Const. Amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

2. U. S. Const. Amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This appeal arises from an order entered August 21, 1996, whereby the Respondent Mae Bell Kidd (the appellee and plaintiff below and hereinafter referred to as the "wife") and the Petitioner Mr. Charles Kidd (the appellant and defendant below and hereinafter referred to as the "husband") were granted a final decree of divorce.

The Circuit Court of Monroe County, Alabama, Honorable Samuel H. Welch, Jr., Circuit Judge, Presiding, entered a final judgment of divorce dated August 21, 1996 (C.R.46,47). According to the judgment, the plaintiff was awarded equal proportional interest in the real property jointly owned by the parties. The defendant was afforded the right to purchase the plaintiff's interest at fair market value. In the event the parties were unable to agree on the monetary amount and terms of payment, the Court reserved jurisdiction for such purpose. The Court also ordered the parties' personal property to be divided equally. This decision was made after the plaintiff wife had put on her case but before the defendant husband could put on his case. (Tr. 39, 40). This decision concerning the property division was again referred to during the husband's offer of evidence. (Tr. 61).

The defendant filed a timely post-judgment motion to alter, vacate or amend the decree (C.R.50-51). In his argument before the Court, the husband challenged the granting of the divorce on the grounds of that Court would not allow him to completely present his evidence, thereby preserving for review the Federal Due Process question presented by this petition. The husband maintains the Court should have permitted him to offer the wife's deposition as evidence and the division of real property was contrary to evidence before the Court. The husband further contends the award was

"excessive considering the plaintiff and the defendant proved incompatibility as the sole [sic] of divorce" (C.R.2)

A hearing was held on the husband's post-judgment motion. Whereupon, on October 25, 1996, the Court denied husband's motion for a new trial.

In his timely filed appeal to the Alabama Court of Civil Appeals, the husband again raised the due process issue in his argument in brief. The Court of Civil Appeals affirmed the trial court's decree without an opinion. (See Appendix A).

In his timely filed Application for Rehearing to the Alabama Court of Civil Appeals, the husband attempted to focus the attention of the Court on the Federal Due Process question raised in his brief by stating the following:

> Of those issues set out in said Brief, the Appellant respectfully directs this Court's attention to that particular issue in this case that may be characterized as follows: **Whether the trial court erred in deciding the disposition of the defendant's property, which was the only real issue in the divorce, before the defendant had put on his case?**

Husband's Application for Rehearing, page 2.

The Application for Rehearing was overruled with no opinion written. (See Appendix B).

The husband then sought review of the issue by petitioning the Supreme Court of Alabama for issuance of a Writ of Certiorari. In the first ground stated in said petition, the Due Process issue was stated specifically and particularly as such. Additionally, in his brief in support thereof the first question presented was as follows:

I. Whether the Court of Appeals should have overturned the decree of the trial court as violative of Procedural Due Process, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 6, of the Alabama Constitution of 1901?

Husband's Brief of Petitioner in Support of his Petition for Writ of Certiorari, at Page 7.

The Petition for Writ of Certiorari was denied. (See Appendix C).

ARGUMENT

The husband in this case was not afforded his day in court. He built a house with his own hands with his own money, facts admitted by his wife, which has been effectively taken from him by the trial court's order. His fundamental right to procedural due process, whereby he would have had the opportunity to present his case in a meaningful way, was taken from him.

In Truax v. Corrigan, 257 U.S. 312, 42 S.Ct. 124 (1921), this Court held that:

> The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, and immunities under the protection of the general rules which govern society.

Id. at 257 U.S. 332, 42 S.Ct. 129.

It is clear that citations by the hundreds could be given in support of this venerable Constitutional principle. In fact, this Court stated over 120 years ago that:

> No man shall be condemned in his person or property without notice, and an opportunity to be heard in his defense, is a maxim of universal application; and it affords the rule of decision in this case.

Earle v. McVeigh, 91 U.S. 398, 401 (1876)

In the instant case, the husband was not allowed to put on his defense before the trial judge disposed of the only real

issue in the case: how the property of the marriage was to be divided. The trial judge told the parties:

> I'm going to try to let both of you have about half of what y'all accumulated. And that's basically what I'm going to do. So, y'all can figure out what half you want or you can let me figure it out for you.

(Tr. P. 39, lines 18-24, P. 40, lines 1-2).

Also, the judge said, "Let's get down to the property issues and get the case over with. I'm going to take a short recess. I'm going to come back and finish this case up." (Tr. P. 40, lines 9-14). These pronouncements occurred *before the husband ever began to put on his case.* There can be no doubt that the judgment that ensued from this trial (which, in fact, did divide the property in half) was a result of the *pre-judgment* of the trial judge as indicated by these cited remarks.

The Court in Postal Telegraph Cable Co. V. City of Newport put it most succinctly: "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings." 247 U.S. 464, 476; 38 S. Ct. 566, 570.

CONCLUSION

This Court should issue a Writ of Certiorari to be directed to the Court of Civil Appeals of Alabama for the reason that the petitioner has been denied his fundamental Constitutional right to procedural Due Process. It is a clear and unmistakable denial of said right when judgment is passed by a trial court after hearing only one party's side of any issue before it. The issue was properly raised at all appropriate stages of this case. Both the trial judge and appellate courts below were given the opportunity to rule on the issue presented in this petition. All of those rulings were wrongly made and should be reviewed by this honorable Court.

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APPENDIX A

AUG 08 1997

FILED AUG 11 1997, JOHN M. SAWYER, CLERK OF COURT

STATE OF ALABAMA --- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM, 1997

2960375

Charles R. Kidd v. Mae Bell Kidd, Appeal from Monroe Circuit Court (DR-93-200)

ROBERTSON, Presiding Judge

AFFIRMED. NO OPINION.

See Rule 53 (a) (1) and (a) (2) (F), Ala.R.App.P.; West v. Pace, 607 So. 2d 222 (Ala. Civ. App. 1991); and Isham v. Isham, 464 So. 2d 109 (Ala. Civ. App. 1985).

The appellant's request for an attorney fee on appeal is denied.

Yates, Monroe, Crawley, and Thompson, JJ., concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 8th day of August, 1997.
s/John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

APPENDIX B

September 26, 1997

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2960375

Charles R. Kidd v. Mae Bell Kidd (Appeal from Monroe County Circuit Court: DR 93-200).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing. 39 (k) Motion Denied.

s/John H. Wilkerson, Jr.
John H. Wilkerson, Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741
(334) 242-4095

APPENDIX C

IN THE SUPREME COURT OF ALABAMA

December 12, 1997

1970118

Ex parte Charles R. Kidd. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Charles R. Kidd v. Mae Bell Kidd) (2960375) (Monroe: DR-93-200)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

MADDOX, J. - Hooper, CJ., Shores, Kennedy and Butts, JJ., concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 12 day of Dec., 1997.
s/Robert G. Esdale
Clerk, Supreme Court of Alabama